



FH

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

---

In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MAP/173582

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 9, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Disability Determination Bureau ["DDB"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone from Madison, Wisconsin on May 12, 2016. Petitioner appeals only his MA Medicaid Purchase Plan ["MAPP"] disability denial -- he does not appeal his disability denial for regular MA.

The issue for determination is whether petitioner is disabled for purposes of MAPP.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner's Representative:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent:**

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

BY: No Appearance

Disability Determination Bureau  
722 Williamson St.  
Madison, WI 53703

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (32 years old) is a resident of Dane County, Wisconsin.
2. Petitioner was eligible for MAPP and in 2015 MA made a redetermination of petitioner's MAPP disability.
3. By a *Medicaid - Disability Decision Notice* letter dated December 30, 2015 DDB found that petitioner is not disabled for purposes of MAPP.
4. On February 9, 2016 petitioner filed a *Medical Assistance -- Reconsideration Request -- Adult*, but DDB affirmed its determination that petitioner is not disabled for purposes of MAPP; petitioner's file was then forwarded to the Division of Hearings and Appeals ["DHA"] for a MAPP disability Hearing.
5. Petitioner has diagnosis of Schizoaffective Disorder -- Bipolar Type, Autism Spectrum Disorder, Attention Deficit Hyperactivity Disorder ["ADHD"] -- inattentive type, and traits of Social Anxiety Disorder.
6. Petitioner is employed for 40 hours per week as a welder; he has worked as a welder for many years; he reports that he enjoys his job, does well at it, is one of the best welders at his company, and has an excellent work record.

### **DISCUSSION**

The Medicaid Purchase Plan ["MAPP"] is the Medical Assistance ["MA"] program that is allowed under section 49.472 of the Wisconsin Statutes. Wis. Admin. Code § DHS 101.03(94m) (December 2008). The goals of MAPP are to: (a) encourage people with disabilities to earn more income without risking loss of health and long term care coverage; (b) allow people with disabilities to save more towards retirement or home ownership, or other financial independence opportunities; and, (c) increase the ability of people with disabilities to purchase services that enhance independence. *BWSP Operations Memo* No. 00-15, File 2791, Date 03/13/2000, p. 2. There are several eligibility requirements that must be satisfied before a person is eligible for MAPP. See, Wis. Stat § 49.472(3) (2013-14) & Wis. Admin. Code Chapter DHS 103 (July 2015.).

One of the eligibility requirements for MAPP that must be satisfied is being disabled. MAPP disabled is defined as follows:

“The individual would be eligible for supplemental security income ["SSI"] for purposes of receiving medical assistance but for evidence of work, attainment of the substantial gainful activity level, earned income and unearned income in excess of the limit established under 42 USC 1396d (q) (2) (B) and (D).”

Wis. Stat. § 49.472(3)(c) (2013-14); See also, Wis. Admin. Code § DHS 103.03(1)(g)2. (July 2015); *Medicaid Eligibility Handbook* ["MEH"], 5.10, 26.1, 26.3.1.3 & 26.3.2.

In order to be eligible for SSI for purposes of receiving MA a person must be disabled as defined in volume 20 of the Code of Federal Regulations ["C.F.R."]. See, 42 C.F.R. § 435.120(a) (2016); 20 C.F.R. § 416.202(a)(3) (2016); Wis. Stat. §§ 49.46(1)(a)4. & 49.47(4)(a)4. (2013-14); Wis. Admin. Code § DHS 103.03(1)(c)2. (July 2015); MEH 4.1.1 & 5.2.

Thus, the MAPP Disabled requirement demands that the person satisfy the MA SSI Disability requirements “but for evidence of work, attainment of the substantial gainful activity level, earned income and unearned income in excess of the limit established under 42 USC 1396d (q) (2) (B) and (D).”

The Secretary of the Wisconsin Department of Health and Family Services ["DHFS"]<sup>1</sup> has concluded that the determination of MAPP Disability is made by applying Steps 2, 3, 4 and 5 of the MA SSI Disability sequential evaluation procedure ["SSI procedure"] (Step 1 is not to be applied) with the following modifications: at Step 4 and Step 5 work the person is now doing to make himself or herself eligible for MAPP cannot be considered. DHA Case No. MAP-19/62964 (Wis. Div. Hearings & Appeals Final Decision November 17, 2004; Proposed Decision July 14, 2004) (DHFS).

Therefore, Steps 2, 3, 4 and 5 of the SSI procedure must be considered in determining whether or not petitioner is MAPP Disabled. However, at Steps 4 and 5 the fact that petitioner is currently employed cannot be considered.

Petitioner argues that he is disabled at Step 3 of the SSI procedure (petitioner does not argue that he is disabled at Step 4 or at Step 5).

Step 3 of the SSI procedure is to determine whether the person's medical condition meets or equals the impairment listings of Appendix 1. See, 20 C.F.R. § 416.920(d) (2016); 20 C.F.R. Appendix 1 to Subpart P of Part 404 (immediately after § 404.1599), *Listing of Impairments* ["Listing"]. The Listing describes, for each of the major body systems, impairments which are considered severe enough to prevent a person from doing any gainful activity. See, 20 C.F.R. § 416.925(a) (2016). If a person has an impairment(s) which meets the duration requirement and which is listed in the Listing, or is equal to a listed impairment(s), the person will be found disabled without considering the person's age, education, and work experience. See, 20 C.F.R. § 416.920(d) (2016); See also, 20 C.F.R. §§ 416.925 et. seq. (2016).

An impairment will not be considered to be one listed in the Listing solely based on a diagnosis. It must also satisfy all the criteria of the Listing. see, 20 C.F.R. § 416.925(d) (2016).

Petitioner argues that he meets the Listings found at section 12.03 and section 12.10. See, 20 C.F.R. Appendix 1 to Subpart P of Part 404, §§ 12.03 & 12.10.

### **Section 12.03**

Section 12.03 of the Listings states:

“12.03 *Schizophrenic, Paranoid and Other Psychotic Disorders*: Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

“The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

“A. Medically documented persistence, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or

---

<sup>1</sup> DHFS is now called the Wisconsin Department of Health Services ["DHS"].

3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
  - a. Blunt affect; or
  - b. Flat affect; or
  - c. Inappropriate affect;
 or
4. Emotional withdrawal and/or isolation;

“AND

“B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration;

“OR

“C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

- “1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.”

Petitioner does not meet section 12.03 of the Listings for at least 3 reasons.

First, the record of this matter does not contain medically documented persistence, either continuous or intermittent, of any of the 4 criteria under “A”. There is evidence that petitioner exercises poor judgment and needs constant prompts to carry out basic tasks (brush teeth; shower; go to bed). However, this is not sufficient to satisfy any of the 4 criteria under “A”.

Second, based on the evidence in the record of this matter, he does not satisfy at least 2 of the criteria under “B”. He might satisfy B.2. -- but clearly does not satisfy any of the others. As above, there is evidence that exercises poor judgment and needs constant prompts to carry out basic tasks (brush teeth; shower; go to bed) -- but he is employed for 40 hours per week as a welder, has worked as a welder for many years, reports that he enjoys his job, does well at it, is one of the best welders at his company, and has an excellent work record. Note that this is Step 3 of the SSI procedure. At Step 3 work the person is now doing to make himself or herself eligible for MAPP can be considered. DHA Case No. MAP-19/62964 (Wis. Div. Hearings & Appeals Final Decision November 17, 2004; Proposed Decision July 14, 2004) (DHFS).

Third, petitioner does not satisfy criteria “C” because his illnesses have not caused more than a minimal limitation of ability to do basic work activities.

**Section 12.10**

Section 12.10 of the Listings states:

“12.10 *Autistic disorder and other pervasive developmental disorders*: Characterized by qualitative deficits in the development of reciprocal social interaction, in the development of verbal and nonverbal communication skills, and in imaginative activity. Often, there is a markedly restricted repertoire of activities and interests, which frequently are stereotyped and repetitive.

“The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

“A. Medically documented findings of the following:

1. For autistic disorder, all of the following:

- a. Qualitative deficits in reciprocal social interaction; and
- b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity; and
- c. Markedly restricted repertoire of activities and interests;

“OR

“2. For other pervasive developmental disorders, both of the following:

- a. Qualitative deficits in reciprocal social interaction; and
- b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity;

“AND

“B. Resulting in at least two of the following:

- “1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Marked difficulties in maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decompensation, each of extended duration.”

Petitioner does not meet section 12.10 of the Listings. This is for 2 reasons.

First, based on the evidence in the record of this matter, he does not have medically documented findings of all of the criteria under “A” (in particular, A1.b., A.1.c. & A.2.b.).

Second, as explained under Section 12.03 above, based on the evidence in the record of this matter, he does not satisfy at least 2 of the criteria under “B”.

**CONCLUSIONS OF LAW**

For the reasons discussed above, petitioner is not disabled for purposes of MAPP Disabled.

**NOW, THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby DISMISSED.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

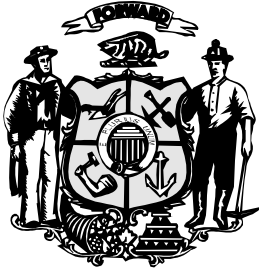
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 26th day of May, 2016

---

\sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 26, 2016.

Dane County Department of Human Services  
Division of Health Care Access and Accountability  
Attorney [REDACTED]